

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROCHELLE DANIEL

Plaintiff,
vs.
WEST ASSET MANAGEMENT, INC.

Case: 2:11-cv-10034
Judge: Cleland, Robert H
MJ: Hluchaniuk, Michael
Filed: 01-04-2011 At 11:03 AM
CMP ROCHELLE DANIEL V WEST ASSET MA
NAGEMENT (LG)

Defendant,

PLAINTIFF'S COMPLAINT

NOW COMES PLAINTIFF Rochelle Daniel, Pro Se, and brings this action to recover monetary damages against Defendants, arising from violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

Plaintiff, Rochelle Daniel is a living person who resides in Wayne County at 19750 Braile, Detroit, MI 48219.

At all times relevant hereto and upon information and belief, Defendant West Asset Management, Inc. ("WAM") is a for profit entity and at all times relevant hereto did business as a collection agency, mailing address P. O. Box 105646, Atlanta, GA 30348.

This Court has jurisdiction over the parties and claims under Federal laws cited herein. Venue is proper in this Court because all of the claims for relief arose in County, where Plaintiff resides.

On or about April 1, 2009, I order AT&T High Speed Internet Server (DSL). However, when the equipment arrived on or about April 8, 2009, I was dissatisfied with the product. Therefore, on April 20, 2009, I called AT&T and spoke with Gloria (rep) to disconnect the service. Gloria told me to return the equipment as soon as possible.

On April 23, 2009, I went to the United States Post Office and returned the equipment in the prepaid postage self-addressed box provided by AT&T.

On June 6, 2009, I received a collection alert letter from AT&T. On June 13, 2009, I called AT&T to dispute the letter and was told the \$79.67 was owed for equipment charge. I explained to the rep that the equipment was returned on 4/23/09, therefore, please update your records.

On June 18, 2009, I received a collection letter from AT&T, and on June 25, 2009, I called AT&T once again to inform them that equipment was returned on 4/23/09.

On July 17, 2009, I received a letter from Southwest Credit, a collection agency, to collect on a debt owed to AT&T for \$79.67, and on July 20, 2009, I sent Southwest Credit a letter to dispute the debt. Southwest Credit was unable to provide debt validation, therefore, cease collection activity.

On November 15, 2009, WAM sent a notice of collection for an outstanding debt owed to AT&T for \$79.67, and on November 27, 2009, I called West Asset to spoke with Marquise Watson and informed him the equipment valued at \$79.67 was returned to AT&T on 4/23/09, however, AT&T has failed to update their records.

On the same day, I again called West Asset and spoke to Imelda (last name not given) wanting to know the name of the person I just spoken to. I then disputed the debt, and requested debt validation. However, Imelda said I could not dispute over the phone and that I would have to dispute in writing per the collection notice letter. I then mentioned a debt collector violates the FDCPA if it states that the consumer's dispute must be made in writing, and to stop calling if they could not validate the debt since the previous collection agency was unable to do so.

WAM left 14 artificial or prerecorded voice recordings to my residence or any service, without my prior consent, that is, I never told WAM that I give them permission to use artificial or prerecorded voice messages to call my residence or any service.¹ As such, WAM knowingly and willfully violates the TCPA.² Exhibit 1 (Calls from WAM)

Cause of Action

COUNT I

In placing the First Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiff's prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT II

In placing the Second Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiff's prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

¹Unless the recipient has given prior express consent, the TCPA and Federal Communications Commission (FCC) rules under the TCPA generally require: Solicitation calls cannot be made to residences with artificial voices or recordings. Calls cannot be made with artificial voices or recordings to cell phones or to any service in which the recipient is charged for the call.

WAM's calls to Plaintiff's residential phone or any service were permissible only if it was made "with [Plaintiff's] prior express consent." 47 U.S.C. § 227(b)(1)(A)(iii) (emphasis added). "Express" means "explicit," not, as collection agencies seems to think, "implicit."

²While the TCPA does not define *willful*, the Communications Act of 1943, of which the TCPA is a part, defines *willful* as "the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision[], rule or regulation." In *Dubsky v. Advanced Cellular Communications, Inc.*, No. 2008 cv 00652, 2004 WL 503757, at * 2 (Ohio Com. Pl. Feb. 24, 2004), the court found that in the context of the TCPA, the term acting "willfully" means that "the defendant acted voluntarily, and under its own free will, regardless of whether the defendant knew that it was acting in violation of the statute.

In WAM's 'Overview' communications states its comprehensive training covers: FDCPA, FCRA, GLBA, TCPA, ID theft, fair lending and red flag regulations among other topics, which goes to the Defendant's knowledge of violating the Act.

COUNT III

In placing the Third Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT VI

In placing the Forth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT V

In placing the Fifth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT VI

In placing the Sixth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT VII

In placing the Seventh Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of

statutory treble damages in the amount of \$1,500.

COUNT VIII

In placing the Eighth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT VIII

In placing the Ninth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT X

In placing the Tenth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT XI

In placing the Eleventh Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT XII

In placing the Twelfth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiffs prior express consent,

Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT XIII

In placing the Thirteenth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiff's prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

COUNT XIV

In placing the Fourteenth Call to deliver collection activity using an artificial or prerecorded voice message to Plaintiff's residence or any service, without having Plaintiff's prior express consent, Defendant willfully violates the TCPA, 47 U.S.C. § 227, and Plaintiff is entitled to an award of statutory treble damages in the amount of \$1,500.

WHEREFORE, Plaintiff hereby prays for the following relief on the foregoing Causes of Action against Defendant:

A. For Plaintiff's 1 through 14 Cause of Actions, an award of statutory damages in the amount of \$500 for each of Defendant's violations of the TCPA (totaling \$7,000) and an award of statutory trebled damages in the amount of \$1,000 for each of Defendant's knowing and willful violations of the TCPA (totaling \$21,000).

PRO SE CLASS

Courts are under a duty to examine the pro se's petition to determine if the allegations provide for relief on any possible theory." *Conner v. Circuit Court of St. Louis*, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir. 1974)).

RELIEF REQUESTED

Wherefore, I pray that this Honorable Court grant damages, costs, and such further equitable and complete relief which to the Court shall seem meet and just.

JURY TRIAL

Plaintiff is requesting a trial by jury.

Respectfully submitted,



Rochelle Daniel
19750 Braile
Detroit, MI 48219
(248) 247-6444

December 29, 2010

EXHIBIT 1

CALLS FROM WEST ASSET MANAGEMENT
(Prerecorded calls are saved and available)

1.	December 14, 2009	5:35 PM
2.	December 21, 2009	7:41 PM
3.	December 29, 2009	2:34 PM
4.	December 30, 2009	12:49 PM
5.	January 11, 2010	6:54 PM
6.	January 26, 2010	8:11 AM
7.	February 4, 2010	6:38 PM
8.	February 10, 2010	4:17 PM
9.	March 3, 2010	5:38 PM
10.	March 9, 2010	3:06 PM
11.	March 12, 2010	10:52 AM
12.	March 15, 2010	6:00 PM
13.	March 18, 2010	12:37 PM
14.	March 26, 2010	2:18 PM

PRERECORDED VOICE MESSAGE:

This is West Asset Management, a debt collector. This message is for Rochelle Daniel, please call me as soon as possible at 888 662 7547 in reference to account number 24951549 (message repeats). Thank you

CIVIL COVE

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement by local rules of court. This form, approved by the Judicial Conference of the United States for the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rochelle Daniel

(b) County of Residence of First Listed Plaintiff USA
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) (248) 247-6444
Pro SeCounty of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

West Asset Management, Inc USA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | | |
|---|---------------------------------------|-----|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | DEF | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | DEF |
| Citizen of Another State | <input type="checkbox"/> 2 | | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY	PERSONAL INJURY	PERSONAL PROPERTY	LITIGATION	CRIMINAL	FAIRNESS & MISDEMEANORS	OTHER
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities Exchange	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 390 Other Property Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 412 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 892 Economic Stabilization	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 413 Housing/ Accommodations	<input type="checkbox"/> 441 Welfare	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act	<input type="checkbox"/> 900 Appeal of Fee Determinations Under Equal Access to Justice	
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(e))	<input type="checkbox"/> 950 Constitutionality of State Statutes		
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act				
			<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 862 Naturalization Application				
				<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee				
				<input type="checkbox"/> 465 Other Immigration Actions				

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|--|---|--|---|--|---|---|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to Dist. Judge from Magistrate Judgment |
|--|---|--|---|--|---|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT: *VS* CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$21,000 *plus Cost, etc*CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
